

## STATE PROCUREMENT OFFICE

### PROCEDURES FOR DEBARMENT OR SUSPENSION

[Section 103D-702, HRS](#)

Subchapter 2, [Chapter 3-126, HAR](#)

#### Step 1: Debarment Action §103D-702(a), HRS

A. Prior to commencing debarment action, consult with:

- 1) Purchasing agency;
- 2) Attorney General (AG) or the corporation counsel; and
- 3) Person or firm who is to be debarred (where practicable).

B. **§103D-702(b), HRS.** Causes for debarment or suspension:

- 1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, of in the performance of the contract or subcontract;
- 2) Conviction under state or federal statutes relating to the embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- 3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- 4) Violation of contract provisions, as set forth below, of a character that is regarded by the Chief Procurement Officer (CPO) to be so serious as to justify debarment action:
  - (A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- 5) Any other cause the CPO determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board;
  - (A) Section 3-126-11.01, HRS, for persons fined \$5000 or more under [section 11-228, HRS](#), or convicted under [section 11-229, HRS](#).
- 6) Violation of the ethical standards set forth in [chapter 84](#) and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

- C. **§103D-702(c), HRS.** CPO shall consider the following factors, however, contractor has the burden of demonstrating to the satisfaction of the CPO the contractor's present responsibility and that debarment is not necessary:
- 1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity constituting cause for debarment or had adopted those procedures prior to any government investigation of the activity cited as the cause for debarment;
  - 2) Whether the contractor brought the activity cited as the cause for debarment to the attention of the appropriate government agency in a timely manner;
  - 3) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and made the result of the investigation available to the chief procurement officer;
  - 4) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;
  - 5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for improper activity, including any investigative or administrative costs incurred by the governmental body, and has made or has agreed to make full restitution;
  - 6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity constituting the cause for debarment;
  - 7) Whether the contractor has implemented or agreed to implement remedial measure, including any identified by the governmental body or the chief procurement officer;
  - 8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
  - 9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and
  - 10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented program to prevent its recurrence.

**Step 2: Written Determination for Debarment or Suspension §103D-702(d), HRS**

- A. CPO written determination shall:
- 1) State the reasons for the debarment or suspension action; and
  - 2) Inform the debarred or suspended person of the rights for review.
- B. A copy of the written determination shall be included with the Notice of Suspension or Notice of Intent to Debar.

**Step 3: Notice of Suspension §3-126-12, HAR**

If cause for debarment exists, proceed to Step 5.

- A. If **probable** cause for debarment exists, as detailed in the written determination, CPO shall issue a **Notice of Suspension** to the person or firm stating that:
- 1) The suspension is for the period it takes to complete an investigation into possible debarment, but shall not exceed three (3) months, unless the CPO determines in writing that additional time is necessary to complete the investigation;

- 2) Bids or proposals, if received from the suspended contractor, will not be considered during the suspension period; and
  - 3) The contractor may request for a review (See Step 6). The written request must be received by the CPO within ten (10) working days after the person or firm receives the notice.
- B. The suspension shall take effect upon issuance of the Notice of Suspension, and will remain in effect during any appeals, and may be terminated by the CPO, an administrative hearings officer, or by a court.

**Step 4: Investigation into Debarment §3-126-12, HAR**

- A. Upon issuance of the Notice of Suspension, the CPO shall begin investigating cause for debarment and pursue debarment if cause for debarment exists.
- B. If results of the investigation show that cause for debarment does not exist, the CPO shall issue a final decision to the person or firm, and withdraw the suspension, after consulting with the AG or corporation counsel and the purchasing agency.

**Step 5: Notice of Debarment §3-126-13, HAR**

- A. If **cause** for debarment exists, the CPO shall issue a **Notice of Intent to Debar** to the person or firm, by certified mail, return receipt requested, stating:
- 1) A debarment is being considered;
  - 2) The reasons for the debarment action;
  - 3) The contractor may request for a review (See Step 6). The written request must be received by the CPO within ten (10) working days after the person or firm receives the notice; and
  - 4) The person or firm may be represented by counsel.
- B. The notice of debarment shall also be sent to the AG and the affected purchasing agency(s).

**Step 6: Review Process**

- A. **§3-126-14, HAR.** A review, when requested in writing by the person or firm proposed for debarment and received within ten (10) working days after receipt of the notice of the suspension or debarment action, shall be conducted by a CPO or designee (review officer).

Review officer shall send a written notice within fifteen (15) working days of the request for review, by certified mail, return receipt requested, and shall state the nature and purpose, the time and place of the review. Copies shall be sent to the AG or corporation counsel and the purchasing agency.

If **no request** is received, a final determination may be made, after consulting with the AG or corporation counsel and the purchasing agency.

- B. **§3-126-15, HAR.** Review shall be completed within sixty (60) days from the date set for the review. Weight to be attached to written evidence presented will be within the discretion of the review officer. The review officer may require additional written evidence to that offered by the parties.

**Step 7: Final Determination §3-126-16, HAR**

- A. Review officer shall prepare a written determination recommending a course of action, and copies shall be sent to all affected parties, including the person or firm, the AG or corporation counsel, and the purchasing agency.
- B. The person or firm shall have ten (10) working days to file comments upon receiving the review officer's determination. The CPO may request oral argument.
- C. After consulting with the AG or corporation counsel, and purchasing agency, the CPO shall issue a final determination to include:
  - 1. The right of the person or firm to commence an administrative proceeding under subchapter 5, chapter 3-126, HAR;
  - 2. Length of debarment, not to exceed three (3) years;
  - 3. Reasons for the debarment action; and
  - 4. To what extent affiliates are affected.
- D. Debarment shall be effective upon issuance and receipt of the final decision by the person or firm.

**Step 8: List of Debarred and Suspended Persons §3-126-18, HAR**

- A. A CPO making a suspension or debarment decision shall notify the State Procurement Office (SPO) of the action, including a copy of the decision to debar or suspend. The SPO shall issue an updated list of persons or firms debarred and suspended to all governmental bodies and post on website.
- B. Upon notification of a debarment or suspension action from the SPO, a CPO shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the debarment or suspension.